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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Miami Date: SEP 5 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed in part. The application will remain denied.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(C). The district director, therefore, denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).
>
> (C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an

illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects that on April 30, [redacted] in [redacted] the applicant was arrested and charged with possession of controlled substance. While the arrest report and the final court disposition are not contained in record of proceeding, the Federal Bureau of Investigation report and the applicant's statement dated August 12, 1997, reflect that the applicant was convicted of the charge and sentenced to 8 years in prison.

The district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. The record, however, does not contain evidence that the applicant was convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a crime involving moral turpitude. Therefore, this finding of the director will be withdrawn.

Additionally, the district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act. The record, however, does not reflect that the applicant was convicted of trafficking in a controlled substance, nor does the record contain the arrest report or charging documents necessary for a determination of inadmissibility under this section as an alien whom there was reason to believe is or has been an illicit trafficker in a controlled substance. Therefore, this finding of the director will be withdrawn.

However, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of possession of controlled substance. While a waiver of grounds of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is available to an alien convicted of a single offense of simple possession of thirty grams or less of marijuana, the record does not show the type or amount of controlled substance found in the applicant's possession at the time of his arrest. It was held in Matter of Grijalva, 19 I&N 713 (BIA 1988), that where the amount of marijuana an alien has been convicted of possessing cannot be ascertained from the alien's conviction record, the alien must come forward with credible testimony or other evidence to meet his burden of proving that his conviction related to 30 grams or less of marijuana.

In view of the foregoing, the applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of

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the Act of November 2, 1966. The decision of the district director will be affirmed as it relates to the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. The application will remain denied.

ORDER: The district director's decision is affirmed in part as it relates to the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. The application is denied.